FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 505

JOSEPH ALEX COTA,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

PETITIONER'S REPLY BRIEF.

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I.

Petitioner Was Convicted of Vagrancy Not "Lodging."

From a reading of Respondent's Brief, the gravity of the constitutional issue becomes even more evident.

On page six of the brief in opposition, the Respondent states quite clearly, "He was convicted of *lodging* in the vestibule . . ." etc. (Emphasis added.) This shows quite clearly that instead of being convicted for having the status of a vagrant, the Defendant was convicted on the basis of the alleged act of "lodging" rather than vagrancy, the crime supposedly set up under California Penal Code, Section 647.7.

As is amply shown in the petition (page 2, para. 2; Arguments and Citations thereto), all case law in Cali-

is accepted, any citizen may be arrested for lodging merely for taking refuge in a doorway of a building while temporarily escaping a rainstorm. Certainly, if prior decisions can be so easily ignored, Section 647.7 is invalid under the United States Constitution because it is vague, indefinite and incapable of uniform application.

Though the Trial Court used less than three lines of instruction to the Jury dealing with status, the Respondent attempts to argue this follows precedent. What is not made clear is that the Trial Court did not give an explanation of the meaning of status to the Jury; the testimony and evidence was restricted by the Court to the act and the Jury was left to ponder the meanings of lodge or dwell and whether it was permanent or temporary.

II.

Conflict of Vagrancy Law With Principle of Adverse Possession.

If the present ruling were allowed to stand, it would come into direct conflict with a principle of California and common law. Section 647.7 conflicts with a method an individual may obtain title to land by way of adverse possession. This illustration is set out to show how grossly untenable is the position of Respondent.

The case of *Scott v. Worden*, 111 Cal. App. 587, 296 Pac. 95, sets out the five elements needed to establish adverse possession.

4. Continuous and uninterrupted occupancy, accompanied by acts and a claim adverse to real owner for statutory period of five years;

5. Payment of all taxes against land for five years.

Obviously, one must lodge on the land of another without permission of the owner. Although this is settled California law, the Respondent would have any adverse possessor, whose intention or purpose is to settle upon or obtain legal title to land, convicted of "lodging" and branded as a vagrant. One has only to look at the instructions of the court in the trial transcript to see that there is no clear-cut definition of lodge or dwell, or whether it means permanent or temporary. Hence, an adverse possessor, who is given a right to claim legal title under the law, would be a vagrant according to the logic of Respondent, without the right to subpoena witnesses who could verify his purpose, intention, or status under that very same law which grants him a right.

III.

Section 647.7 Is Vague and Unconstitutional Because It Sets No Standard for Number of Acts Making One a Vagrant.

Section 647.7 is also vague and indefinite and incapable of uniform application from another aspect. It establishes no standard or criterion for the number or numbers of acts which would make one a vagrant or give him such status. Except for lewd acts, even then the law as